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7 **DISTRICT COURT OF ARIZONA**  
8 **UNITED STATES DISTRICT COURT**

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AND IS SUBJECT TO REJECTION BY THE COURT.

REFERENCE LR WP 5.4  
(Rule Number/Section)

9  
10  
11 **STACI BURK,**

12  
13 Plaintiff.

CV22-01967PHX-DMF

14  
15 vs.

16 **MOTION TO EXTEND**  
17 **TIME FOR SERVICE**

18 **SENATOR KELLY TOWNSEND, A**  
19 **SINGLE WOMAN IN HER PERSONAL**  
20 **CAPACITY ACTING UNDER "COLOR OF**  
21 **LAW" AS A GOVERNMENT OFFICIAL,**  
22 **AND DOES I-X.**

23  
24 Defendants.

25  
26 **PLAINTIFF STACI BURK'S MOTION TO EXTEND TIME FOR SERVICE OF THE**  
27 **SUMMONS AND COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF**

28 Pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff Staci Burk hereby moves this  
Court for an Order extending the time for service of the summons and complaint on defendant

1 now former Senator Kelly Townsend, for an additional 90 days. Good cause for this extension  
2 exists, as demonstrated below and in the attached supporting declaration.

3 Rule 4(m) provides that a court "must extend the time for service for an appropriate  
4 period" where the plaintiff can show good cause for its inability to serve a defendant within 90  
5 days. Good cause exists when an outside factor, such as the defendant's evasion, prevents  
6 service, rather than negligence or inadvertence by the plaintiff.

7 At a minimum, "good cause" means excusable neglect. A plaintiff may also be required  
8 to show the following: (a) the party to be served personally received actual notice of the lawsuit;  
9 (b) the defendant would suffer no prejudice; and (c) plaintiff would be severely prejudiced if his  
10 complaint were dismissed. *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.1991). *Allen v.*  
11 *Arpaio*, No. CV-14-0378-PHX-SPL (JFM), 2015 U.S. Dist. LEXIS 107257, at \*6 (D. Ariz. Aug.  
12 7, 2015).

13 Notwithstanding Rule 4(m), where "good cause does not exist, the court may in its  
14 discretion decide whether to dismiss the case without prejudice or extend time  
15 for service." *Petrucelli v. Bohringer and Ratzinger*, 46 F.3d 1298, 1305 (3rd Cir. 1995).  
16 "[I]f good cause is not established, the district court may extend time for service upon a showing  
17 of excusable neglect." *Lemoge v. U.S.*, 587 F.3d 1188, 1198 (9th Cir. 2009). *Allen v. Arpaio*, No.  
18 CV-14-0378-PHX-SPL (JFM), 2015 U.S. Dist. LEXIS 107257, at \*6-7 (D. Ariz. Aug. 7, 2015).

19 Here, good cause exists because Plaintiff has made diligent attempts to locate and serve  
20 Defendant the 90-day service window, however, has encountered obstacles due to a change of  
21 address for Defendant since the action was filed. Plaintiff also experienced the emergency  
22 hospitalization of her child since this case was filed (Dec. ¶2), and a complicated personal  
23 medical condition (Dec. ¶3), which combining these factors have also prevented continuous  
24 efforts to locate and serve Defendant. Upon information and belief, Defendant is aware of the  
25 existence of this action due to a local watch group locating it on public record and posting it  
26 online, which Defendant then unfriended Plaintiff on social media. Defendant may be avoiding  
27 service as Plaintiff made an attempt of service at an address that is believed to be Defendant's  
28 address, and while the home appeared occupied with cars in the driveway, there was no answer  
at the door (Dec. ¶4).

Plaintiff is requesting a 90 day extension which would not prejudice the Defendant as  
upon reasonable belief she has read the Plaintiffs complaint that was posted and circulated online  
by an unrelated and unknown third party. A 90 day extension will allow confirmation of  
Defendants address, service, and accommodate Plaintiff's medical limitations hindering her  
consistent effort.

## 25 **II. AN EXTENSION IS ALSO WARRANTED BECAUSE THE STATUTE OF** 26 **LIMITATIONS COULD BAR PLAINTIFF FROM REFILEING THIS CASE OR** 27 **OBTAINING AVAILABLE REMEDIES IN THE EVENT OF DISMISSAL.**

28 There is good cause to extend the service period in this case, but even if there were not, this  
Court has discretion to nevertheless extend the service deadline "if the applicable statute of

1 limitations would bar” refiling the action and relief to the plaintiff. *Horenkamp v. Van Winkle*  
2 & Co., 402 F.3d 1129, 1132 (11th Cir. 2005) (quoting Rule 4(m), Advisory Committee Note  
3 (1993 amendments)). Indeed, “it [is] incumbent upon the district court to at least consider” the  
4 running of the limitation period when considering a motion brought under Rule 4(m). *Lepone-*  
5 *Dempsey*, 476 F.3d at 1282.

6 Thus, an extension of the service period is further warranted in this case because a  
7 dismissal, even without prejudice, could result in the applicable statute of limitations barring the  
8 refiling of this case or limiting the Plaintiff’s available remedies. Good cause for an extension  
9 exists here, but even if it did not, this Court has the discretion to extend the period for service for  
10 lawsuits that would otherwise be potentially time-barred.

11 THEREFORE, Plaintiff respectfully requests this Court grant her motion to extend time  
12 for service of process for 90 days

13 Dated this 14th of February 2023.

14   
15 Staci Burk